

INFORMATION PAPER

DAJA-SC
8 September 2006

SUBJECT: Gifts to Soldiers

1. **Purpose:** To provide guidance on options that may be available when individuals or private organizations wish to give gifts to soldiers.

2. **Facts:**

a. During these times, it is not unusual for private organizations or individuals to contact Army commands and seek to provide gifts to soldiers. However, under the ethics rules, soldiers may not accept gifts from prohibited sources. Soldiers may also not accept gifts that were given to them because of their official positions. Nevertheless, a number of options are available for private organizations and individuals that wish to provide gifts to soldiers. The authority for these options are gift exceptions in the ethics rules, or a statute or regulation.

(1) Tangible items, or even cash, could be made available by a private individual or company to all DOD military personnel. Under the ethics rules, opportunities and benefits that are available to all military personnel are not considered gifts and may be accepted. 5 CFR 2635.203(b)(4). However, any gift of cash must not violate the statute that restricts supplementation of salary, 18 USC 209. For example, a gift of cash that is described by the donor as a supplement to the salaries of soldiers would potentially be a violation of the statute.

(2) Tangible items, or even cash, could be made available by a private individual or company who are not prohibited sources, to a group or class of soldiers that is not defined in a manner which discriminates on the basis of official responsibility, or on a basis that favors those of higher rank or rate of pay. 5 CFR 2635.204(c)(2)(iii). Any gift of cash must not violate the statute that restricts supplementation of salary, 18 USC 209.

(3) Tangible items, or cash, could be given as an award to soldiers for meritorious public service or achievement. The person or organization giving the award may not have interests that are substantially affected by the performance of the soldier's official duties. Gifts with a market value in excess of \$200 and awards of cash require a written determination by an ethics counselor that the award is a part of an established program of recognition. This means that the awards must be made on a regular basis, or the awards are funded to ensure its continuation on a regular basis; and the selection of recipients must be made pursuant to written standards. 5 CFR 2635.204(d)(1).

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(4) A cash gift may be given to a Morale, Welfare and Recreation (MWR) fund of an installation (i.e. a single fund), which could then be used to benefit soldiers. Soldiers would not be direct recipients, but would benefit from MWR fund expenditures.

Approval authority for donations to a MWR fund (also known as NAFI fund) would depend upon the amount. For amounts over \$200,000, the approval authority is the Secretary of the Army (SECARMY). The Community Family Support Center (CFSC) can approve amounts up to \$200,000. IMA Region Directors may approve amounts up to 50,000; local commanders up to 25,000; and NAFI fund managers up to 5,000 if delegated by local commanders. AR 215-1, par. 7-39.

(5) An unconditional gift of money may be made to a unit welfare fund, which could then be used to benefit soldiers. Soldiers would not be direct recipients, but would benefit from the fund's expenditures. AR 1-100, par. 6b(1).

(6) Gifts of goods could be distributed to soldiers under AR 1-101. Such gifts may only be accepted if they promote health, comfort, convenience, and morale. Cash may not be accepted under this authority. The approval authority is at the Major Command (MACOM) level, and may be delegated to subordinate commanders. The Adjutant General also has approval authority for gifts for distribution in CONUS. The donor must pay all transportation charges from point of origin to the recipient.

(7) Gifts could be made to injured or ill soldiers and their families. Statutory authority now exists which permits injured or ill soldiers and their family members to accept unsolicited gifts from non-Federal entities, subject to certain limitations. A gift cannot be accepted in return for being influenced in the performance of an official act, or if it is solicited or coerced. A gift may also not be accepted in violation of any statute. A written determination from an ethics counselor is required if the gift has a market value of over \$305. The determination must conclude that the gift is not offered in a manner that discriminates on the type of official responsibility, or favors those of higher rank or rate of pay; the donor may not have interests that may be affected substantially by the performance of the soldier's official duties; and acceptance may not cause a reasonable person with knowledge of the relevant facts to question the integrity of DOD programs or operations. Joint Ethics Regulation, paragraph 3-400.

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(8) A conditional gift could be made to the Army under a statute authorizing gifts to the Army (10 USC 2601). Conditional gifts of money have specified limitations on ownership and use. Conditional gifts of tangible personal property are offered on condition that the property be used in a manner, or for a purpose. They are to be used for the benefit of, or in connection with, the establishment, operation, maintenance, or administration of any school, hospital, library, museum, cemetery, or any other similar institution or organization in the Army. The approval authority for gifts that are \$1,000 or less in value is an installation commander. For gifts greater than \$1,000 in value, the approval authority is SECARMY. Approval authority for all monetary gifts is SECARMY. 10 USC 2601, and AR 1-100, par. 3, 4, and 5.

b. Army personnel must never solicit for gifts. Whenever commanders or staff members discuss the above options with private individuals or organizations, care must be taken not to solicit for gifts. Additionally, any proposal from a private organization or individual offering gifts to soldiers should be subjected to a legal review. Additionally, no gift should be accepted if it causes an appearance of impropriety, or if it would cause an individual to question the integrity of Army programs or operations.

Mr. Kaff/(703)588-6783